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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

4910.00011

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on November 29, 2006

Signature Cheryl M. Fernandez

Typed or printed name Cheryl M. Fernandez

Application Number

09/696,051

Filed

October 25, 2000

First Named Inventor

Kenneth R. Owens, et al.

Art Unit

2616

Examiner

Bob A. Phunkulh

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

 applicant/inventor. assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96) attorney or agent of record.

Registration number _____

 attorney or agent acting under 37 CFR 1.34.Registration number if acting under 37 CFR 1.34 52,611

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November 29, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

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NOV 29 2006 Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Owens et al.

Serial No.: 09/696,051

Filed: October 25, 2000

Title: PROTECTION/RESTORATION OF MPLS
NETWORKS

Examiner: Bob A. Phunkulh
Group Art Unit: 2616

CERTIFICATE OF FACSIMILE
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By: Cheryl M. Fernandez
Cheryl M. Fernandez

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PRE-APPEAL BRIEF REQUEST FOR REVIEW REASONS

Dear Sir:

Responsive to Final Office Action mailed on September 25, 2006, the Applicants respectfully request a Pre-Appeal Brief Request for Review for the following reasons.

Claims 4-6 and 12-29 are pending in the present application.

Claims 4-29 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,721,269 of Cao et al. ("Cao").

Claim 24 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 is rejected under 35 U.S.C. § 102(e) as being anticipated by Cao. Specifically, the Examiner states that:

Regarding claim 4, Cao discloses a multi-protocol label switching (MPLS) system protection switch comprising:

a first data input port into which MPLS data is received from a data source (the data source connected to LSRS not shown in figure 1);

a first data output port from which MPLS data is sent to a second MPLS switching system comprising an MPLS working path (path S-A-B-E, see claim 1 and col. 6 lines 12-23);

a second data output port from which MPLS data is sent to a third MPLS switching system comprising an MPLS protection path (path S-C-D-E, see claim 1 and col. 6 line 12-23);

a second data input port adapted to connect to a path that follows the MPLS working path for receiving failure notifications;

whereby data received at the data input port from the data source can be selectively routed from the second MPLS switching system to the third MPLS switching system by a node at an origin of both the MPLS working path and the MPLS protection path and upstream to the failure (the source and sink routers along the path having both working and protection paths and each router acts as an origin of both the MPLS working and protection path, see figure 1 and col. 3 lines 35-57; and a failure is propagated to the source and sink routers, where the source node upstream to the failure, see col. 3 lines 23-41).

The above reference is from the Final Office Action mailed on September 25, 2006, pp. 3-4.

The Applicants respectfully submit that the Examiner has failed to point out in Cao the limitation in Claim 4 of a second data input port for receiving a failure notification associated with a failure and selectively routing data from a second MPLS switching system (comprising an MPLS working path) to a third MPLS switching system (comprising an MPLS protection path) by a node at an origin of both the MPLS working path and the MPLS protection path and upstream to the failure. Throughout the specification, Cao teaches against *switching by a node at the origin of both the working and protection paths and upstream to the failure*. Cao discloses that "a router in accordance with the principles of the present invention employs explicit routing protocols to establish a plurality of explicitly routed paths between source (entry) and sink (destination) routers." (Cao, col. 4, lines 40-44) Furthermore, Cao discloses that the sink router selects one of these explicitly routed paths as the primary path and

communicates along that path. (Cao, col. 4, lines 44-46) "If the primary path fails, the sink router switches to communications over the secondary path." (Cao, col. 3, lines 40-42)

Furthermore, Cao discloses details on protection switching which occurs at the egress router. "During normal operation datagrams will flow through both the S-A-B-E and S-C-D-E ERLSPs, with the egress router, LSR E employing active protection switching to select one of the flows to pass through." (Cao, col. 10, lines 9-14) Should a fault occur in one of the links along the primary ERLSP, LSRs will detect the broken link through physical layer fault detection mechanisms. (Cao, col. 10, lines 14-16) "If the egress node, will determine whether the failed ERLSP is protected." (Cao, col. 10, lines 46-47) If it is protected, the LSR will change the protection status of the failed ERLSP from 3 to 0. (Cao, col. 10, lines 47-49) "By modifying the protection status, changing the protection status of the ERLSP from "backup" to "unprotected", the egress LSR completes the hardware protection switching, such as SONET protection switching, since the hardware protection switching relies upon the protection status of a given link to switch." (Cao, col. 10, lines 49-55)

In the above arguments, underlined emphasis is added by the Applicants. For further arguments, please see the Applicants' July 13, 2006 Amendment, pp. 9-10.

In contrast, Claim 4 is limited to:

4. A multi-protocol label switching (MPLS) system protection switch comprising:
 - a first data input port into which MPLS data is received from a data source;
 - a first data output port from which MPLS data is sent to a second MPLS switching system comprising an MPLS working path;
 - a second data output port from which MPLS data is sent to a third MPLS switching system comprising an MPLS protection path; and
 - a second data input port adapted to connect to a path that follows the MPLS working path for receiving a failure notification associated with a failure;
whereby data received at the data input port from the data source can be selectively routed from the second MPLS switching system to the third MPLS switching system by a node at an origin of both the MPLS working path and the MPLS protection path and upstream to the failure.

(Underlined emphasis is added by the Applicants.) Independent Claims 6, 12 and 21 include similar limitations. Claims 5, 13-20, 22-29 directly or indirectly depend on independent Claims 4, 6, 12 and 21. Therefore, Cao does not render Claims 4-6 and 12-29 unpatentable under 35 U.S.C. § 102(e).

Claim 24 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner states that:

Regarding claim 24, it is not clear what it meant by "the path that follows the working path mirrors the working path" as cited in the claim. Should it be the protection path mirrors the working path?

The above reference is from the Final Office Action mailed on September 25, 2006, p. 2-3. The Applicants respectfully disagree with the Examiner. In Claim 24, "the path that follows the working path" is the path which is earlier recited in Claim 21: "a path that follows the working path".

In view of the arguments set forth herein, it is respectfully submitted that the applicable rejections have been overcome. Accordingly, it is respectfully submitted that Claims 4-6 and 12-29 should be found in condition for allowance.

If there are any additional charges, please charge them to our Deposit Account Number 500-654.

Respectfully submitted,

Dated: November 29, 2006

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